

Legal Aspects in Spectrum Auctioning

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Structure of the presentation

- ❑ Part I – Overall approach to the Terms of Reference
- ❑ Part II - Specific issues

Overall approach to the Terms of Reference

- ❑ Legislation in force should be the guardian of the entire selection procedure:
 - European legislation (e.g. Directive 2002/20/CE, Directive 2002/21/CE, Radio Spectrum Decision, RSPP, European Commission Decisions);
 - National legislation;
 - CEPT/ECC Decisions and recommendations;
 - Secondary legislation, if necessary.
- ❑ Consultation mechanism should be present when NRA adopts rules and regulation for the selection procedure.

Overall approach to the Terms of Reference

The consultation mechanism allows to:

1. Understand the rules;
2. Adjust the rules, if the case;
3. Improve the selection procedure;
4. Create an open partnership between NRA and market players;
5. Active and fruitful participation in the adoption of rules process.

Benefits for:

1. Interested party (operators);
2. NRA and operators;
3. NRA;
4. NRA and operators
5. NRA and operators.

Overall approach to the Terms of Reference

- ❑ Understanding the rules is the key issue especially when NRA applies a new concept (types of auctions):
 - Comparative selection procedure (tender);
 - Competitive selection procedure (e.g. SMRA, CCA - auction).
- ❑ Auction design and form of auctions.

Overall approach to the Terms of Reference

□ Procedural aspects

- Procedural matters should be discussed with the market players in a transparent manner in order to understand the rules before starting point:
 - ✓ Communication with the Commission;
 - ✓ Transfer of the requested information between bidder and the Commission;
 - ✓ Electronic surveillance (if the case);
 - ✓ Rules of conduct;
 - ✓ Bid submission and bid increment;
 - ✓ Time and completion of a round;
 - ✓

Overall approach to the Terms of Reference

- ❑ Failure to comply with the procedural aspects will increase the risk:
 - Effects:
 - Legal challenge;
 - Litigation;
 - Postpone or cancellation of the selection procedure.

Specific issue

- ❑ Rights and obligations conferred by the licences:
 - License term:
 - ✓ validity;
 - ✓ coverage obligations;
 - ✓ quality of services,
 - ✓ technical conditions;
 - ✓ transfer of the usage rights;
 - ✓ licence amendment and revoking.
 - Measurements and monitoring procedure in ToR or in licence;
 - Access obligations (national roaming and/or MVNO).

Specific issue

- ❑ Legal representation of bidders (power of attorney):
 - Legal representation during the selection procedure;
 - Limits of the power of attorney.

Anti-collusion rules;

- Any attempt to conclude, any agreements between the participants;
- Agreements between the candidates/bidders themselves and the agreements involving members of the groups of different candidates/bidders.

Specific issue

- ❑ Rules relating to the participants conduct:
 - the attempt to influence the members of the Commission;
 - the attempt to contact the members of the Commission (see exceptions).

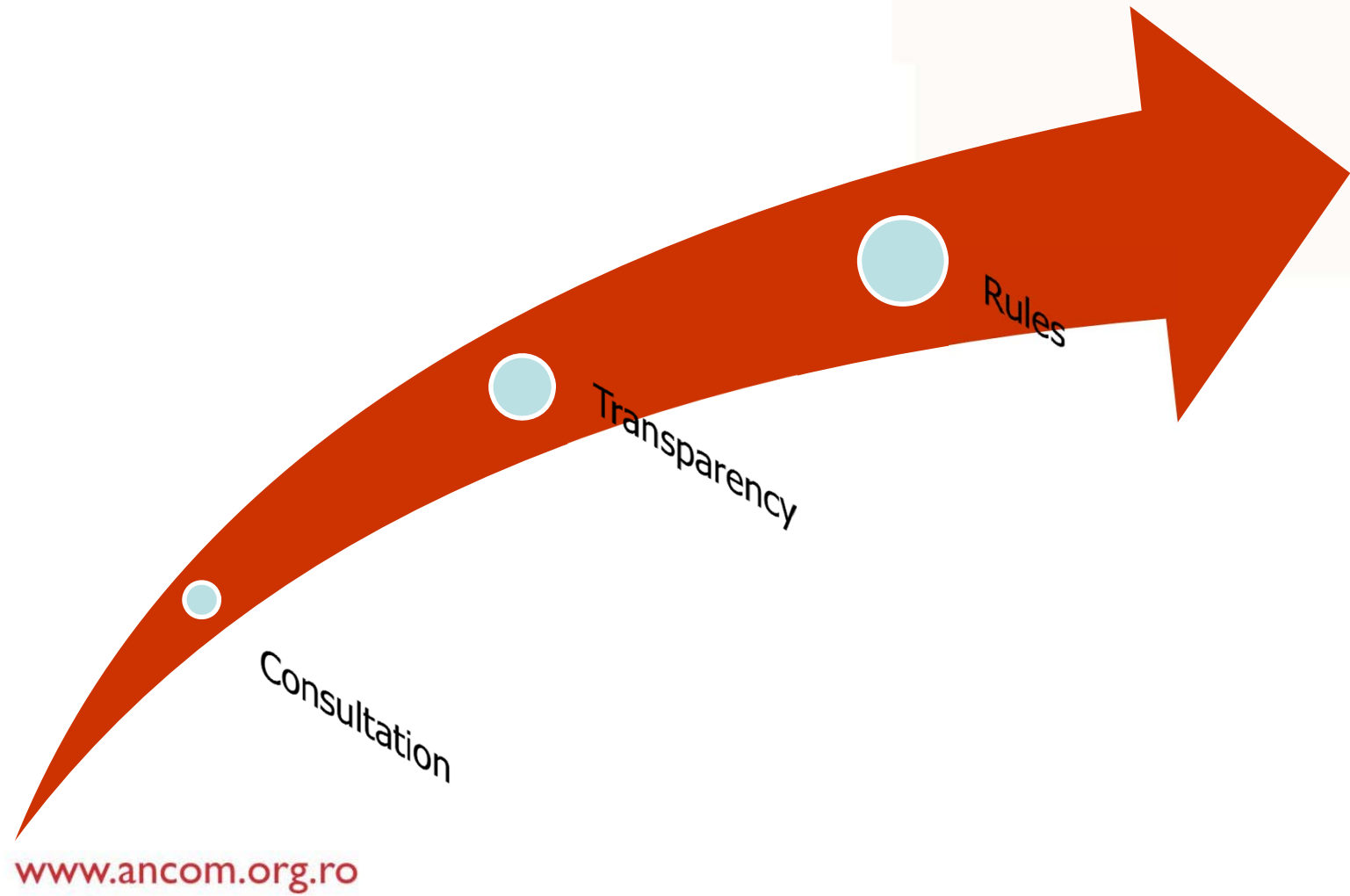
- ❑ Letter of guarantee:
 - value;
 - form and conditions [e.g. validity (e.g. July 31, 2013) execution).

- ❑ Payment obligation (licence fees) and conditions should be established before starting point.

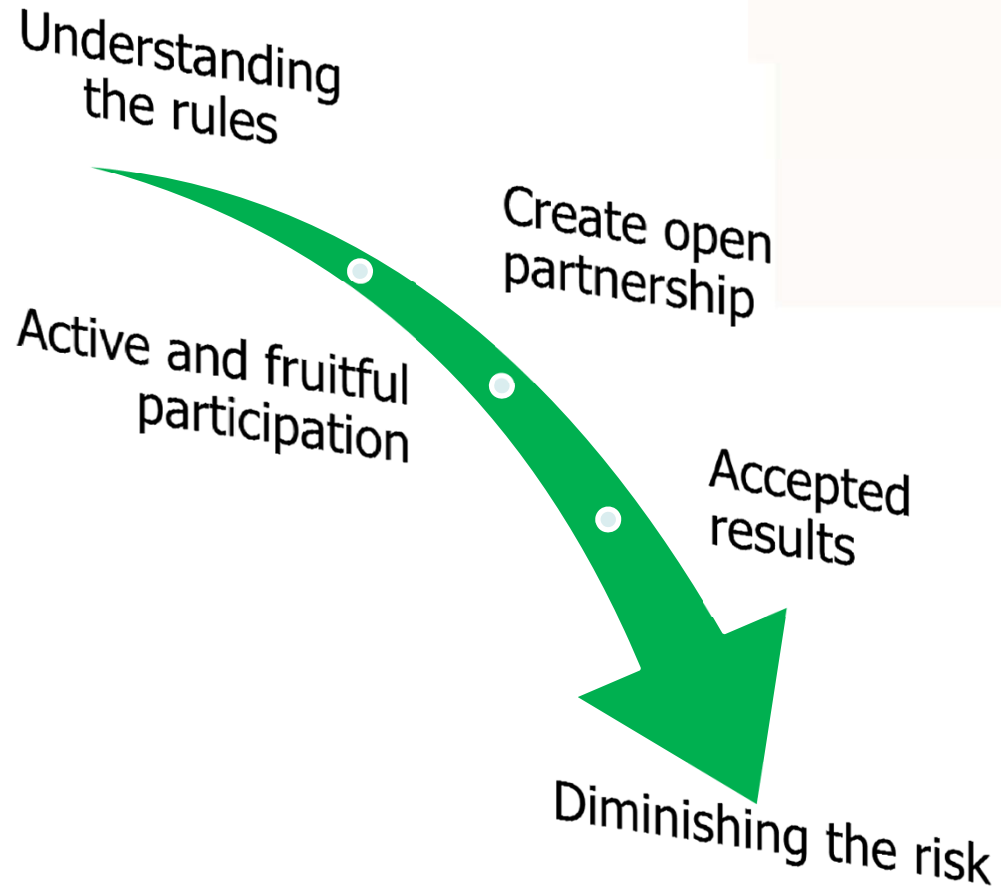
Specific issue

- Independence from other applicants (*de jure/de facto*);
- Competition issue (aquisition of the usage rights and limitations);
- Transitional measures, if the case.
- Specific measures adopted by NRA in case of breaking the rules.

Recommendation



Recommendation





Thank you for your attention

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